Tax Incentive Mechanism to Help Save Old New Hampshire Barns

A 2002 State law (RSA 79-D) creates a mechanism to encourage preservation of old New Hampshire barns and other historic agricultural buildings.

RSA 79-D authorizes towns and cities to grant property tax relief to barn owners who (a) can demonstrate the public benefit of preserving their barns or other old farm buildings, and (b) agree to maintain their structures throughout a minimum 10-year preservation easement.

The Purpose

The 2002 law is based on widespread recognition that many of New Hampshire's old barns and other agricultural buildings are important local scenic landmarks and help tell the story of farming in the state's history. Yet many of these historic structures are being demolished or not repaired because of the adverse impact of property taxes. RSA 79-D is intended to encourage barn owners to maintain and repair their buildings by granting them specific tax relief and assuring them that assessments will not be increased as a result of new repair and maintenance work.

The Mechanism

The program represents a uniquely New Hampshire approach, which is strictly voluntary on the part of the property owner, and combines statewide eligibility criteria and guidelines with decision-making and implementation at the local level. It is closely modeled after New Hampshire's discretionary easement program (RSA 79-C), which authorizes local governments to grant property tax relief to encourage preservation of open land.

On or before April 15 of the new tax year, any owner of an historic barn or other farm building may seek relief by applying to their local governing body (Board of Selectmen or city government) to grant a discretionary preservation easement to the municipality and agreeing to maintain the structure in keeping with its historic integrity and character during the term of the easement. The application, executed on a form provided by the N.H. Department of Revenue Administration, is to include a map showing the location of the structure(s) and a description of how the property meets the prescribed test of public benefit.

The town selectboard or appropriate city government department will then have 60 days in which to act on the application. A public hearing is required, which may provide an opportunity for local historical societies or other advisory groups to express support for barn preservation efforts. If the municipality determines, in exercising its discretion, that the proposed preservation of the structure is consistent with the purpose of the law, it may acquire an easement on the structure for a minimum of ten years and grant tax relief within a range of a 25 to 75% reduction of the structure's full assessed value. Maintaining and repairing the building will not result in an increase in its assessed value for property tax purposes.

NEW HAMPSHIRE PRESERVATION ALLIANCE
P.O. BOX 268 • CONCORD, N.H. 03302-0268
TELEPHONE (603) 224-2281 • FAX (603) 226-9368 • www.nhpreservation.org

Effective Date
The law (RSA 79-D) went into effect on July 2, 2002. Property tax reductions for barns and other buildings, and the land under them, first became effective in tax year 2003. Applications for new easements, to go into effect in the coming tax year, must be submitted on or before April 15.

Eligibility
For this program, "historic agricultural structure" is defined as a barn or other structure, including the land on which it is built, which currently or formerly was used for agricultural purposes, and is at least 75 years old. The test of demonstrated public benefit shall be considered to have been met if the structure complies with one or more of the following: (1) provides scenic enjoyment to the general public from a public road or waterway; (2) is historically important on a local, regional, state or national level; (3) contributes to the historic or cultural integrity of a property listed on or eligible for the New Hampshire State or National Registers of Historic Places, or is in a locally designated historic district.

In determining eligibility, the Selectboard or appropriate city department shall refer to statewide guidelines adopted by the New Hampshire Historic Agricultural Structures Advisory Committee, and may weigh the public benefit to be gained by the preservation of the structure versus the tax revenue to be lost if the easement is accepted. The statewide guidelines include consideration of whether there is local interest and support for the structure's preservation, its historic and agricultural significance, and the degree to which tax relief will encourage its preservation.

Whom do I contact?
The N.H. Department of Revenue Administration has provided application form PA-36-A to all town and city governments. Application forms and eligibility guidelines should be available from your town clerk, Board of Selectmen, or appropriate city department. Applications are also available at http://www.revenue.nh.gov/forms/2013/documents/pa-36-a.pdf. For more information, contact the N.H. Department of Revenue Administration's Property Appraisal Division, (603) 230-5950.

For more background information, including a copy of the statute, a sample discretionary preservation easement and a guide to assist applicants and selectmen work through the application and approval process, and an application itself, go to https://nhpreservation.org/old-barn-resources-overview/ or contact the New Hampshire Preservation Alliance at (603) 224-2281 or admin@nhpreservation.org.

The full text of the statute is also available on the state website, http://www.gencourt.state.nh.us/rsa/html/V/79-D/79-D-mrg.htm

The Preservation Alliance is the statewide, non-profit membership organization committed to preserving historic buildings, communities and landscapes through leadership, education and advocacy.

January 2017

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THE NH BARN TAX INCENTIVE: TEN TIPS FOR APPLICANTS

Here are some ideas from successful applicants for
the NH Tax Incentive to Preserve Historic Agricultural Structures

1. Carefully study the law (RSA 79-D), the accompanying definitions and eligibility guidelines, and the instructions on the back of the application form. (Packets that include this information are available from the NH Preservation Alliance, 224-2281.) In addition to barns, the application may apply to other historic agricultural structures including those in-town.

2. Talk informally with your Selectmen: Explain that you intend to apply, how preservation of an historic structure meets the community's interest, and how the public benefit will outweigh any loss of tax revenue.

3. Get support from neighbors, other townspeople, your local historical society and Heritage or Historic District Commission. They may also be able to help you with researching the history of your barn (see Tip 4).

4. *Do your homework:* Do all the research you can about the building(s), including their age, how they were used and about the families who lived and worked there. Is the building historically important in the community because of the type of structure, the owners and history of the site, or because only a few of its kind remain? In addition, review any RSA 79-D easements that have already been accepted by your town or city.

5. Work out your proposal: In addition to the main barn(s), should your application also include outbuildings? Which one (or more) of the three tests of public benefit do your structures meet? What is the current assessment and tax bill on the building(s)?

6. Photographs: A picture is worth a thousand words, if not dollars. Don't assume the Selectmen are familiar with the building, even if your building is a prominent landmark in town. Include with your application a good set of photos, including close-ups and views of what can be seen from public roads and bodies of water. Old photos can be very helpful in telling the story; check with local historic organizations and/or publications to help locate old photos.

7. More is better: Include with your application as much historical and context information as possible; if you have a lot of supporting documentation, submit it with a clear one-page summary. Attach letters of support and similar materials. At the same time, don't overwhelm the decision-makers with more material than they will have time to read.

8. Repair and Maintenance: Have a plan! Describe, with cost figures, any recent or planned repair work. Particularly if the structure is in bad repair, be prepared to present a repair plan for the 10-year easement period, and possibly to include it as part of the easement agreement. Describe how an easement would help make the repairs financially possible. You want to show your commitment to maintaining the structure in keeping with its historic character and integrity for at least the next ten years and how this will benefit the public.

9. Public Hearing: This is required as part of the application process, so use it to your advantage by taking part and encourage supporters to attend and speak, as well. Encourage Selectmen to visit the structure before making their decision.

10. The Easement: Keep in mind that the discretionary easement agreement you are to enter into with your town is a legal contract between two parties. Work with the Selectmen or their representative on its content and make sure you are comfortable with the outcome.

If you have questions, or need more information, contact: New Hampshire Preservation Alliance
(603) 224-2281 admin@nhpreservation.org www.nhpreservation.org

These tips were compiled by the Historic Agricultural Structures Advisory Committee.

TITLE V
TAXATION

CHAPTER 79-D
DISCRETIONARY PRESERVATION EASEMENTS

Section 79-D:1

79-D:1 Declaration of Public Interest. – It is hereby declared to be in the public interest to encourage the preservation of historic agricultural structures which are potentially subject to decay or demolition, thus maintaining the historic rural character of the state's landscape, sustaining agricultural traditions, and providing an attractive scenic environment for work and recreation of the state's citizens and visitors. It is further declared to be in the public interest to prevent the loss of historic agricultural structures due to property taxation at values incompatible with their preservation. The means for encouraging preservation of historic agricultural structures authorized by this chapter is the acquisition of discretionary preservation easements by town or city governments to assure preservation of such structures which provide a demonstrated public benefit.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:2

79-D:2 Definitions. – In this chapter:

I. ""Discretionary preservation easement" means a preservation easement of an historic agricultural structure, including the land necessary for the function of the building, granted to a city or town for a term of 10 or more years.

II. ""Public benefit" shall have the meaning described in RSA 79-D:3, II.

III. ""Historic agricultural structure" means a barn or other structure, including the land necessary for the function of the building, currently or formerly used for agricultural purposes and as further defined by the advisory committee established under RSA 227-C:29.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:3

79-D:3 Qualifying Structures. –

I. Any owner of an historic agricultural structure who wishes to maintain the structure in a use consistent with the purposes of this chapter may apply to the governing body of the municipality in which the property is located to convey a discretionary preservation easement to the municipality.

II. A discretionary preservation easement shall be considered to provide a demonstrated public benefit if it provides at least one of the following public benefits:

(a) There is scenic enjoyment of the structure by the general public from a public way or from public waters.

(b) The structure is historically important on a local, regional, state, or national level, either independently or within an historic district.

(c) The structure's physical or aesthetic features contribute to the historic or cultural integrity of a property listed on or determined eligible for listing on the National Register of Historic Places, state register of historic places, or locally designated historic district.

III. In determining whether an historic agricultural structure demonstrates the necessary public benefit to qualify for a discretionary preservation easement, the governing body shall have reference to guidelines adopted by the advisory committee established under RSA 227-C:29.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:4

79-D:4 Application Procedure. –

I. Any owner of an historic agricultural structure which meets the tests of public benefit in RSA 79-D:3, II may

apply to the governing body to grant a discretionary preservation easement to the municipality, agreeing to maintain the structure in keeping with its historic integrity and character during the term of the easement.

II. No owner of an historic agricultural structure shall be entitled to have a particular structure classified for any tax year under the provisions of this chapter unless the owner has applied to the governing body on or before April 15 of the tax year on a form provided by the commissioner of the department of revenue administration. Such application shall include a map showing the location of the structure to be subject to the discretionary preservation easement, and a description of how the property meets the tests of public benefit in RSA 79-D:3.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:5

79-D:5 Approval, Denial. –

I. If, after a duly noticed public hearing, the governing body finds that the proposed preservation of such historic agricultural structure is consistent with the purposes of this chapter, it may take steps to acquire a discretionary preservation easement as provided in this chapter. In exercising its discretion, the local governing body may weigh the public benefit to be obtained versus the tax revenue to be lost if such an easement is granted. The governing body shall have no more than 60 days to act upon the application.

II. If the governing body denies the application to grant a discretionary preservation easement to the municipality, such denial shall be accompanied by a written explanation. The local governing body's decision may be appealed by using the procedures of either RSA 79-A:9 or 79-A:11 provided, however, that such denial shall be deemed discretionary and shall not be set aside by the board of tax and land appeals or the superior court except for bad faith, discrimination, or the application of criteria other than those set forth in RSA 79-D:3 and paragraph I of this section.

III. The easement shall be a burden upon the property and shall bind all transferees and assignees of such property. An easement granted pursuant to this subdivision shall not be assigned, transferred, or released by the municipality without the consent of the owner, except as provided in RSA 79-D:8.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:6

79-D:6 Terms; Recording. – Any preservation easement acquired by the municipality pursuant to this chapter shall be for a minimum of 10 years. The easement terms shall include the method of assessment pursuant to RSA 79-D:7 and the terms of renewal pursuant to RSA 79-D:8, III. The local governing body shall provide for the recording of such easements with the register of deeds. Any costs of recording shall be the responsibility of the applicant.

Source. 2002, 86:1, eff. July 2, 2002. 2007, 27:2, eff. Jan. 1, 2008.

Section 79-D:7

79-D:7 Assessment of Property Subject to Discretionary Preservation Easement. –

I. The method of assessment of discretionary preservation easement structures shall be included as a term of the agreement in any discretionary preservation easement acquired by a municipality. Assessment shall fall within a range, one end of which shall be 75 percent of the full value assessment; the other end of the range shall be 25 percent of said full value assessment.

II. The local governing body shall have the discretion to set the value of the discretionary preservation easement at a level within this range which it believes reflects the public benefit conferred by the property under the criteria set forth in RSA 79-D:3, II. The assessment shall not be increased because the owner undertakes maintenance and repairs designed to preserve the structure.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:8

79-D:8 Release of Easement, Expiration, Renewal, Consideration. –

I. Any property owner who has granted a discretionary preservation easement to a municipality pursuant to the

terms of this chapter, after the effective date of this chapter, may apply to the local governing body of the municipality in which the property subject to a discretionary preservation easement is located for a release from such easement upon a demonstration of extreme personal hardship. Upon release from such easement, a property owner shall pay the following consideration to the tax collector of the municipality:

(a) For a release within the first half of the duration of the easement, 20 percent of the full value assessment of such structure and land under RSA 75:1.

(b) For a release within the second half of the duration of the easement, 15 percent of the full value assessment of such structure and land under RSA 75:1.

II. [Repealed.]

III. Upon the expiration of the terms of the discretionary easement, the owner may apply for a renewal, and the owner and local governing body shall have the same rights and duties with respect to the renewal application as they did with respect to the original application; provided, however, that at the time of the original granting of the discretionary preservation easement, the parties may include, as a term of the agreement, a provision for automatic renewal for the same term as the original. Such a provision may include the specification of the manner in which the tax assessment on the property for the next term is to be determined at the time of renewal.

IV. The tax collector shall issue a receipt to the owner of such property and a copy to the local governing body for the sums paid. The local governing body shall, upon receiving a copy of the above-mentioned consideration, execute a release or renewal of the easement to the owner who shall record such a release or renewal. A copy of such release or renewal shall also be sent to the local assessing officials if they are not the same parties executing the release or renewal.

V. In the event that the structure is destroyed by fire, storm, or other unforeseen circumstance not within the control of the property owner, the preservation easement shall be released without penalty.

VI. If, during the term of the preservation easement, the owner shall fail to maintain the structure in conformity with the agreement, or shall cause the structure(s) to significantly deteriorate or be demolished or removed, the preservation easement shall be terminated and a penalty assessed in accordance with RSA 79-D:8, I(a) and (b).

Source. 2002, 86:1, eff. July 2, 2002. 2007, 27:1, eff. Jan. 1, 2008.

Section 79-D:9

79-D:9 Payment; Collection. –

I. If a consideration is due under RSA 79-D:8, I, the assessed value shall be determined as of the actual date of the release or expiration. Any consideration is in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the release or expiration.

II. Any consideration shall be due and payable by the owner at the time of release or expiration to the municipality in which the property is located. If the property is located in an unincorporated town or unorganized place, the tax shall be due and payable by the owner at the time of release or expiration to the county in which the property is located. Moneys paid to a county under this chapter shall be used to pay for the cost of services provided in RSA 28:7-a and RSA 28:7-b. Any consideration shall be due and payable according to the following procedure:

(a) The commissioner shall prescribe and issue forms to the local assessing officials for the consideration due, which shall provide a description of the property, the discretionary preservation easement, the full value assessment under RSA 75:1, and the amount payable.

(b) The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the consideration along with a special tax warrant authorizing the collector to collect the consideration under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice of tax. Such bill shall be mailed within 12 months of the release or expiration.

(d) Payment of the consideration shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18 percent per annum shall be due thereafter on any consideration not paid within the 30-day period.

Source. 2002, 86:1, eff. July 2, 2002. 2007, 27:3, eff. Jan. 1, 2008.

Section 79-D:10

79-D:10 Exemption for Eminent Domain. – If any of the property which is subject to a discretionary preservation easement is condemned by any governmental agency or is acquired through eminent domain

proceedings, the local governing body shall execute a release of the easement to the owner. None of the liquidated consideration provisions of RSA 79-D:8, I shall be applicable to releases granted pursuant to this section.

Source. 2002, 86:1, eff. July 2, 2002. 2007, 27:4, eff. Jan. 1, 2008.

Section 79-D:11

79-D:11 Local Preservation Easement Programs. – This chapter shall not be construed to limit the development of any other state, county, town, or city easement program for preservation, conservation, or other purposes.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:12

79-D:12 Lien for Unpaid Taxes. – The real estate of every person shall be held for the taxes levied pursuant to RSA 79-D:8.

Source. 2002, 86:1, eff. July 2, 2002.

Section 79-D:13

79-D:13 Enforcement. – All taxes levied pursuant to RSA 79-D:8 which are not paid when due shall be collected in the same manner as provided in RSA 80.

Source. 2002, 86:1, eff. July 2, 2002. 2004, 203:14, eff. June 11, 2004.

Section 79-D:14

79-D:14 Rulemaking. –

I. The commissioner of the department of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The application procedures under RSA 79-D:4.

(b) The payment and collection procedures under RSA 79-D:9.

II. The commissioner of the department of cultural resources shall adopt such rules as may be applicable under the authority of RSA 227-C:5.

Source. 2002, 86:1, eff. July 2, 2002.

FOR REGISTER OF DEEDS USE ONLY

FORM
PA-36-A

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

DISCRETIONARY PRESERVATION EASEMENT APPLICATION

STEP 1 PROPERTY OWNER (S)

PLEASE TYPE OR PRINT

LAST NAME	FIRST NAME
LAST NAME	FIRST NAME
STREET ADDRESS	
STREET (continued)	
TOWN/CITY	STATE / ZIP CODE

STEP 2 PROPERTY LOCATION OF LAND AND HISTORIC AGRICULTURAL STRUCTURE BEING CLASSIFIED

PLEASE TYPE OR PRINT

STREET				
TOWN/CITY			COUNTY	
NUMBER OF ACRES	MAP #	LOT #	BOOK #	PAGE #
CHECK ONE: Original Application ☐		Renewal ☐	Tax Year	

STEP 3 REASON FOR DISCRETIONARY PRESERVATION EASEMENT APPLICATION

Describe how the Historic Agricultural Structure meets one of the tests of public benefit per RSA 79-D:3. Submit additional sheets, if necessary.

How many square feet will be subject to the easement?

STEP 4 SIGNATURES OF ALL PROPERTY OWNERS OF RECORD

TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

FORM
PA-36-A

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

DISCRETIONARY PRESERVATION EASEMENT APPLICATION

(CONTINUED)

STEP 5 TO BE COMPLETED BY THE LOCAL ASSESSORS

☐ APPROVED ☐ DENIED	Pending approval of Discretionary Preservation Easement Agreement by landowner and assessing officials.
Comments:	

STEP 6 APPROVAL OF A MAJORITY OF SELECTMEN/ASSESSORS

TYPE OR PRINT NAME (ink black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (ink black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (ink black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (ink black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (ink black ink)	SIGNATURE (in black ink)	DATE

STEP 7 DOCUMENTATION

Is a map of the entire parcel showing the property location, orientation, overall boundaries and acreages clearly showing easement area requested submitted?	Yes ☐	No ☐

FORM
PA-36-A

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

DISCRETIONARY PRESERVATION EASEMENT APPLICATION

GENERAL INSTRUCTIONS

WHO MUST FILE	Form PA-36-A, Discretionary Preservation Easement Application, shall be used by owners of historic agricultural structures applying for a discretionary preservation easement in accordance with RSA 79-D:3.
WHAT TO FILE	Land owners submitting a completed application, Form PA-36-A, shall also: Submit a map showing: (a) The location of the historic agricultural structure; and (b) The number of square feet to be included in the discretionary preservation easement.
WHEN TO FILE	A completed Form PA-36-A, and a map of the land to be subject to the discretionary preservation easement must be filed on or before April 15 of the tax year the easement is to be granted.
WHERE TO FILE	Once completed and signed in black ink, this form and attachments shall be filed as follows: Original: Register of Deeds Copy: Local Assessing Officials Copy: Land Owner
APPEALS	If an application for a discretionary preservation easement is denied, an applicant may appeal within six months of any such action by the assessing officials in writing to the New Hampshire Board of Tax & Land Appeals or the County Superior Court in accordance with RSA 79-A:9 or RSA 79-A:11. Forms for appealing to the Board of Tax and Land Appeals may be obtained from the NH Board of Tax and Land Appeals, 107 Pleasant Street, Concord, NH 03301 or by calling (603) 271-2578 or by visiting their web site at www.state.nh.us/btla. Be sure to specify that you are appealing a Discretionary Preservation Easement Application denial.
ADA	Individuals who need auxiliary aids for effective communication in programs and services of the department are invited to make their needs and preferences known to the NH Department of Revenue Administration.
NEED HELP	Contact your local municipality or the Property Appraisal Division at (603) 230-5950.

LINE-BY-LINE INSTRUCTIONS

STEP 1	Enter the complete name(s), address, municipality, state and zip code of the property owner(s) requesting a discretionary preservation easement under RSA 79-D:3.
STEP 2	Enter the location information of the land and Historic Agricultural Structure being classified in the spaces provided. Check whether original application or renewal and enter the tax year the easement is to be granted.
STEP 3	Describe how the Historic Agricultural Structure meets the requirements of RSA 79-D:3 and how many square feet will be subject to the easement. Submit additional sheets, if necessary.
STEP 4	All owners of record must type or print their full name, sign and date in black ink on the lines provided. If there are more then four owners, submit a supplemental list of all additional owners names and signatures.
STEP 5	To be completed by the local assessing officials, indicating approval or denial pending final approval of selectmen or assessors.
STEP 6	Signatures of a majority of the local selectmen or tax assessors on the lines provided indicates final approval.
STEP 7	Indicate whether a map has been included as described. **If the map is missing or this application is incomplete, this application shall be denied in accordance with RSA 79-D:4,II.**

New Hampshire Historic Agricultural Structures Advisory Committee
c/o New Hampshire Division of Historical Resources
19 Pillsbury Street
Concord, New Hampshire 03302-2043

Determining Eligibility for RSA 79-D Discretionary Preservation Easements For Preserving Historic Agricultural Structures

RSA 79-D:2 III: "Historic agricultural structure" means a barn or other structure, including the land necessary for the function of the building, currently or formerly used for agricultural purposes and as further defined by the advisory committee established under RSA 227-C:29.

As further defined by the Advisory Committee:

" Historic" shall mean agricultural structures which are at least 75 years of age. Exceptions may be made for newer structures if they are considered to be of exceptional significance or importance.

An illustrative list of "agricultural structures" which might qualify for a discretionary preservation easement is provided in Attachment 1. Local governing bodies may decide to include other related agricultural structures in accordance with local circumstances.

"Barn" shall mean a building constructed to shelter livestock, equipment, feed, or other farm products. It may be free-standing, or connected to one or more other structures.

"Land necessary for the function of the building" shall consist of the footprint of the building and of any ramps or banks which are or were needed to support the structure and its operations.

Guidelines:

In deciding whether to accept a discretionary preservation easement, RSA 79-D:3 establishes that the local governing body of the municipality shall determine whether the structure provides at least one of the following public benefits:

(1) there is scenic enjoyment of the structure by the general public from a public way or from public waters;
(2) it is historically important on a local, regional, state or national level, either independently or within an historic district; or
(3) the structure's physical or aesthetic features contribute to the historic or cultural integrity of a property listed on or determined eligible for listing on the National Register of Historic Places, State Register of Historic Places, or locally designed historic district.

In addition, the law states that, in determining whether an historic agricultural structure demonstrates the necessary public benefit, the local governing body shall have reference to guidelines adopted by the Advisory Committee. The guidelines are outlined in Attachment 2.

Attachment 1: Illustrative List of Agricultural Structures
Attachment 2: Guidelines to Assist in Determining "Necessary Public Benefit"

Guidelines and definitions adopted February 5, 2001; revised March 12, 2001, and August 26, 2002

Attachment 1

Determining Eligibility for RSA 79-D Discretionary Preservation Easements

For Preserving Historic Agricultural Structures

Illustrative List of Agricultural Structures

The following are examples of buildings and structures that might qualify for a discretionary preservation easement. It is not intended to be a complete list. Local governing bodies may decide to include other related agricultural structures in accordance with local circumstances.

barn, separate or attached

silo

milk house

sugar house

carriage house

wagon shed

ice house

stable

corn crib

poultry barn or coop

well or spring house

blacksmith shop

piggery

granary

saw mill

cider mill

creamery

farrier or harness shop

hop house

equipment or machine shed

Delco house

grist mill

woodshed

farm stand

greenhouse

tool shed

windmill house

Attachment 2

Determining Eligibility for RSA 79-D Discretionary Preservation Easements

For Preserving Historic Agricultural Structures

Guidelines to Assist in Determining "Necessary Public Benefit" To Qualify for a Discretionary Preservation Easement

Public Interest and Benefit

Consider questions such as:

- Is it a familiar local landmark?
- Is it visible from a public road or from public waters? To what extent does it contribute to the scenic qualities of the community and region, thus benefiting local residents, visitors, and tourism?
- Is there interest or support for the structure's preservation?
  Examples: owner/family maintenance efforts or commitment to preservation; structure surveyed by historical society; included in town preservation plan or historic district; offers of volunteer help with physical repairs, letter of support from local heritage commission or historical society?

Historic and Agricultural Significance

Consider the age of the structure and such questions as:

- Does it help tell the story of agriculture in the community or region?
- Is it a good representative of a type of barn?
- Is it now an unusual or rare surviving type of barn or outbuilding?
- Is it a good example of historic construction methods or materials?
- Does it retain its historic character?
- Is it part of a landscape or setting that retains it historic character?

Degree to Which Tax Relief will Help Preserve the Structure

Consider questions such as:

- Use and condition of structure; owner's investment over time.
- Plans for repair or renovation.
- Owner's use of, plans for, preservation tools such as conservation easements, investment tax credits, or local, state or national historic register listing.

Use of the Structure

Consider questions such as:

- Is the barn or other structure on a working farm or otherwise being used for agricultural purposes?
- If the structure has been adapted for other use, has the historic character of the structure been maintained?

Degree to which Building's Preservation reinforces other Local and State Goals and Policies, such as:

- Agricultural designations, e.g., Bicentennial, Farm of Distinction, Tree Farm, New England Green Pastures.
- Current Use (e.g., goals of maintaining the character of the state's landscape and conserving its resources).
- Scenic and Cultural Byways; Country Roads.
- Regional Plans and local Master Plans.

IMPLEMENTING RSA 79-D: Discretionary preservation easement for historic agricutural structures.

This summary was prepared by Carolyn W. Baldwin, Esq., of counsel to the law firm of Baldwin, Callen & Hogan of Concord, in collaboration with the chair of the NH Historic Agricultural Structures Advisory Committee, Carl Schmidt. It is a guide only, designed to assist applicants and selectmen to work through the process established by the legislature in RSA 79-D.

SELECTMEN

The Board of Selectmen in a Town (or the appropriate decision-making body in a City or Town with town council form of government) has the ultimate discretion to grant tax relief to the owner of an historic agricultural structure under the Statute. But the decision is not to be made in an arbitrary manner.

The Statute includes standards for determining eligibility, which have been elaborated by the guidelines adopted by the Advisory Committee under the guidance of the New Hampshire Division of Historical Resources.

Assume you, as a board of selectmen, have received an inquiry from a taxpayer about the possibility of accepting a discretionary preservation easement under RSA 79-D. Where do you begin?

1. First you provide the applicant with a copy of the application (Department of Revenue Administration Form PA-36-A) and guidelines. Then assuming that the property owner completes the application:

2. Study §1 of the statute: the declaration of public purpose. You have no authority to grant any special tax consideration through a discretionary preservation easement if the structure concerned does not meet this general purpose. Refer to the guidelines adopted by the NH Historic Agricultural Structures Advisory Committee to assist you in this initial review decision.

3. Schedule a public hearing. Notify the applicant and post and publish the notice of hearing. The general rule is 10 days notice published in a paper of general distribution and posting in two or three public places. Notify the Historic District Commission, Historical Society or Heritage Commission if one exists in your community.

4. Decide whether the structure is a "qualifying structure."
Does it provide one or more of the "public benefits" contemplated in §3. Refer to the guidelines adopted by the NH Historic Agricultural Structures Advisory Committee.

(a) Is it visible from a road or lake or river? Or
(b) Is it historically important either independently or in an historic district? Or
(c) Do the structure's physical or aesthetic features contribute to the historical or cultural integrity of a property listed on or determined eligible for listing on the National Register of Historic Places, State Register of Historic Places, or locally designated district?

5. Consider the applicant's proposal.
Does the proposal preserve the structural and aesthetic integrity and character of the structure including the required commitment to maintain the structure in keeping with its historic integrity and character during

the term of the easement? Input from the Historic District Commission, Heritage Commission or Historical Society, together with the State guidelines, should be considered.

The issue of a change of use may arise. The purpose of the statute is to encourage an owner to maintain and preserve the structure. The cost of converting a barn to another use is NOT repair and maintenance. I.e. the costs of conversion for use as a dwelling, restaurant, theater, or other non-agricultural use is NOT "maintenance and repair." A structure that is converted to a non-agricultural use MAY be eligible if the adaptation retains the historic integrity of the building, but only for the level of maintenance and repair, not for the value added by the conversion.

6. Decision. Within 60 days after the Board accepts a completed application it must grant or deny it. Document the factual bases for your decision.

A. If the Board decides to deny the application, you should make findings: that it does not meet the qualifying criteria and or the loss of tax revenue outweighs the public benefit. BE SPECIFIC.

B. If you decide to approve the application, that is to acquire a discretionary preservation easement on the structure, you should find that the application is consistent with the purposes of the statute and that the public benefit to be gained by preservation of the structure outweighs any loss of revenue.

7. Determine the details.
- Percentage (between 25% and 75% of assessment value) that will apply.
- Length of time of the easement--minimum of 10 years.
- Amount of land to be included as "necessary for the function of the building."

8. Finalize and record the easement document. We can provide a sample easement document. Use it as a guide to help finalize the agreement. The applicant pays the costs of recording, but the Town should take responsibility for seeing that the document is recorded.

9. Follow up. Be sure your building inspector/code enforcement officer/assessor are aware of the easement and its terms. File a copy with the assessment card, along with a summary of your findings. (Remember, future boards, administrators etc. will not have first-hand knowledge, so leave a clear paper trail.) Any application for building permit should be checked for compliance with the easement. Monitor compliance from time to time. A Heritage Commission might be tasked to provide an annual report on compliance.

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THE APPLICANT

1. Before you apply, study the statute and guidelines. Does your structure fit the criteria? How exactly? Refer to the procedural suggestions for Selectmen so you will know how the process may proceed.

2. What is your proposal? The purpose is to preserve the integrity of an historic agricultural structure. It is NOT the purpose to subsidize grandiose improvements or conversions of the structure to a new use such as a dwelling, restaurant, theater or whatever.

3. Talk to the selectmen informally, and explain what you intend to do. They may not be familiar with discretionary easements so help them to understand what you have in mind and how it meets the interest of the community to encourage the preservation of an historic agricultural structure, and how the public benefit outweighs any loss of tax revenue. (Selectmen have to be very sensitive to this issue. They will not be comfortable granting any kind of property tax break to a landowner if they perceive an unwarranted or unjustified burden on other taxpayers from doing so.)

If your structure is in an historic district, you may want to consult with the Historic District Commission for input. (The selectmen may also consult the HDC in such a case.) If your Town has a Heritage Commission or a Historical Society, their input may be helpful. For further assistance consult the State Division of Historic Resources and/or the New Hampshire Preservation Alliance.

4. Complete the application. Attach a map showing the location of the structure and any supporting land to be included in the easement. Photographs of the building and its environs and a sketch of any planned renovations may be helpful. Tell the Board how your application meets the statutory purposes and guidelines.

5. Attend the public hearing scheduled by the Selectmen. Bring along neighbors, representatives of the local historical society, historic district commission or heritage commission, or others who may offer useful input to the selectmen.

6. If the Board decides to grant your application, work with them or their representative to complete the easement document. You are accepting an obligation to maintain the structure consistent with the purposes of the chapter. Remember this is a legal and enforceable interest in property that you are granting to the Town. It will be recorded and is a lien on the property. If you should market the property, it may affect the title. So be sure you are comfortable with that outcome.

- How long a term (10 years is the minimum)?
- What are the provisions for renewal?
- What is a fair level of taxation (25%-75% of assessed value) that will compensate you for granting the Town an interest in your property?[1]

Revised, November 2003

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[1] Note that should the municipality undergo a general reevaluation, your assessed value may rise in accordance with the general rise in values throughout the community. The percentage of assessed value agreed upon in the easement will NOT change during the term of the easement.